

UNITED STATES PATENT AND TRADEMARK OFFICE

Re: Application of: Gregor CEVC
Serial No.: 09/284,683
Filed: June 24, 1999
For: PREPARATION FOR THE TRANSPORT OF AN
ACTIVE SUBSTANCE ACROSS BARRIERS

BOX: CPA
Assistant Commissioner for Patents
Washington, D.C. 20231

December 4, 2001

INFORMATION DISCLOSURE STATEMENT (1 of 4)

Sir:

In order to facilitate the mailing of all references listed on the enclosed form PTO-1449, this Information Disclosure Statement is the **first** of four identical Information Disclosure Statements and forms PTO-1449 submitted in the above-referenced application. Specifically, this Information Disclosure Statement is filed with references **AA-AZ** of form PTO-1449.

Pursuant to the provisions of 37 C.F.R. §§ 1.97-1.99, Applicant submits herewith the following Information Disclosure Statement. Applicant respectfully requests consideration of the references listed on the attached form PTO-1449.

U.S. Patent No. 5,741,515 (reference AD) corresponds to EP 0 707 847 (Bayer); U.S. Patent No. 5,958,379 (reference AA) corresponds to EP 0 704 206 (Regenold); and U.S. Patent No. 6,165,500 (reference BA) corresponds to EP 0 475 160 (Cevc). Canadian Patent CA 1 143 656 (reference AK) corresponds to German patent DE 30 16 976 (reference AT).

The undersigned attorney has recently learned that there had been an Opposition to German Patent, DE 4447287 C1 which has a specification corresponding to the above referenced U.S. application. The above referenced application is a filing under 35 U.S.C. 371 of International application PCT/EP96/04526 filed on October 17, 1996. Specifically, in the German Patent Office DE 4447287 C1 has been subject to an Opposition Proceeding brought on or about February 6, 1997 by ROVI GmbH (the "Opponent"), which proceeding is still in progress.

The claims granted in the DE 4447287 C1 correspond to the claims set forth in PCT/EP96/04526 and the claims originally filed in the above referenced application. However, the claims granted in DE 4447287 C1 are different in scope from the claims pending in this

application. Nevertheless, the following information is provided so that the Examiner is able to review the references cited and the arguments made by the Opponent in the Opposition Proceeding. For the Examiner's convenience a copy of the German Patent is attached hereto as Exhibit A, although a copy of the German patent has been previously filed with an Information Disclosure Statement on November 30, 1999 in the above-referenced application.

OPPOSITION OF DE 4447287 C1

The Opponent sought revocation of the DE 4447287 C1 in accordance with §21, Section 1, Nos. 1, and 2 and §1, Sec. 1, No. 2 of the German Patent Law, alleging anticipation, lack of inventive activity, and deficient disclosure.

Five references, publications D1-D5, were cited by the Opponent. Publication D1 is EP 0 475 160 filed as reference AM in an Information Disclosure Statement filed on November 30, 2000 in the above-referenced application. Publications D2-D5 are listed on the attached form PTO-1449 as references CP, BP, CO and DL, respectively. Attached hereto as Exhibit B are the Opponent's arguments filed in support of the Opposition Request. Also attached is Exhibit C, the Patentee's response, wherein the Patentee requested that the Opposition be revoked as impermissible or, in the alternative, as unfounded and further requested that a hearing be scheduled. Exhibit D hereto is the Opponent's response to the Patentee's response to the Opponent's Arguments in support of the Opposition Request. In this document, the Opponent continues to present arguments for the admissibility of the grounds for opposition, and anticipation, lack of inventive activity and deficient disclosure of DE 4447287 C1. Exhibit E hereto is the Patentee's response to the Opponent's response as set forth in Exhibit D. Exhibits B to E are the English translation of the documents filed in German during the Opposition Proceeding.

During the prosecution of DE 4447287 C1, the Examiner had cited five PCT publications and European application EP 0 224 837 A2, each of which is listed on form PTO-1449, as references CB-CG, respectively. Because the disclosure of the EP 0224837 is in German, Applicant has also listed the corresponding U.S. disclosure, i.e., U.S. Patent No. 4,954,345 as reference AB on form PTO-1449.

COPENDING APPLICATIONS

The undersigned also respectfully directs the Examiner's attention to Applicant's copending patent applications as follows:

U.S. Patent Application Serial No. (U.S.S.N.) 09/621,574 filed June 21, 2000 as a continuation of U.S.S.N. 07/844,664 filed April 8, 1992 now issued as U.S. Patent No. 6,165,500 to Cevc, entitled "Preparations for the application of agents in mini-droplets";

U.S.S.N. 09/555,986 filed August 17, 2000 entitled "Method for developing, testing and using associates of macromolecules and complex aggregates for improved payload and controllable de-association rates" to Cevc et al.;

U.S.S.N. 09/887,493 filed June 22, 2001 entitled "Improved formulation for topical non-invasive application in vivo" to Cevc.

The EP equivalent filing (EP 0475160 B1) of U.S. Patent No. 6,165,500, mentioned above, has been the subject of an EP Opposition Proceeding. A decision has been rendered by the EPO Opposition Division upholding EP 0475160 B1 in its entirety, and an Appeal from the foregoing decision is still pending.

All references cited in the Opposition to DE 4447287 C1 were also cited in the Opposition to EP 0475160 B1. References cited in the Opposition and Appeal Proceedings to EP 0475160 B1 that were not cited in the Opposition to DE 4447287 C1 have also been made of record. Additionally, references cited in the above referenced copending applications and related applications pending in other foreign patent offices have also been made of record on attached form PTO-1449.

This Information Disclosure Statement is not a representation that the documents cited herein are considered most pertinent, or that a search has been undertaken or that any of the cited documents are indeed prior art. The Examiner is invited to undertake an independent search.

Pursuant to Rule 37 C.F.R. §1.97(b), an Information Disclosure Statement shall be considered by the Patent Office if filed before the mailing date of the first Official Action on the merits. Thereafter, an Information Disclosure Statement shall be considered if it is accompanied by the requisite fees set forth in 37 C.F.R. §121.17. Since, this Information Disclosure Statement is being filed prior to the receipt of a first Official Action on the merits, no fee is required.

Finally, the Commissioner is authorized to charge any additional fee or credit, any overpayment in such fees to Deposit Account No. 50-0552.

Applicant respectfully requests that the Examiner consider and make of record the documents cited herein. Applicant further requests that a copy of the form PTO-1449, appropriately initialed by the Examiner, be returned to the Applicant in turn.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's attorney at the telephone number set forth below.

Respectfully Submitted,

DAVIDSON, DAVIDSON & KAPPEL, LLC

By: 

Clifford M. Davidson

Reg. No. 32,728

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Reg. No. 34,781

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INFORMATION DISCLOSURE STATEMENT (2 of 4)

Sir:

In order to facilitate the mailing of all references listed on the enclosed form PTO-1449, this Information Disclosure Statement is the **second** of four identical Information Disclosure Statements and forms PTO-1449 submitted in the above-referenced application. Specifically, this Information Disclosure Statement is filed with references **BA-BR** of form PTO-1449.

Pursuant to the provisions of 37 C.F.R. §§ 1.97-1.99, Applicant submits herewith the following Information Disclosure Statement. Applicant respectfully requests consideration of the references listed on the attached form PTO-1449.

U.S. Patent No. 5,741,515 (reference AD) corresponds to EP 0 707 847 (Bayer); U.S. Patent No. 5,958,379 (reference AA) corresponds to EP 0 704 206 (Regenold); and U.S. Patent No. 6,165,500 (reference BA) corresponds to EP 0 475 160 (Cevc). Canadian Patent CA 1 143 656 (reference AK) corresponds to German patent DE 30 16 976 (reference AT).

The undersigned attorney has recently learned that there had been an Opposition to German Patent, DE 4447287 C1 which has a specification corresponding to the above referenced U.S. application. The above referenced application is a filing under 35 U.S.C. 371 of International application PCT/EP96/04526 filed on October 17, 1996. Specifically, in the German Patent Office DE 4447287 C1 has been subject to an Opposition Proceeding brought on or about February 6, 1997 by ROVI GmbH (the "Opponent"), which proceeding is still in progress.

The claims granted in the DE 4447287 C1 correspond to the claims set forth in PCT/EP96/04526 and the claims originally filed in the above referenced application. However, the claims granted in DE 4447287 C1 are different in scope from the claims pending in this

application. Nevertheless, the following information is provided so that the Examiner is able to review the references cited and the arguments made by the Opponent in the Opposition Proceeding. For the Examiner's convenience a copy of the German Patent is attached hereto as Exhibit A, although a copy of the German patent has been previously filed with an Information Disclosure Statement on November 30, 1999 in the above-referenced application.

OPPOSITION OF DE 4447287 C1

The Opponent sought revocation of the DE 4447287 C1 in accordance with §21, Section 1, Nos. 1, and 2 and §1, Sec. 1, No. 2 of the German Patent Law, alleging anticipation, lack of inventive activity, and deficient disclosure.

Five references, publications D1-D5, were cited by the Opponent. Publication D1 is EP 0 475 160 filed as reference AM in an Information Disclosure Statement filed on November 30, 2000 in the above-referenced application. Publications D2-D5 are listed on the attached form PTO-1449 as references CP, BP, CO and DL, respectively. Attached hereto as Exhibit B are the Opponent's arguments filed in support of the Opposition Request. Also attached is Exhibit C, the Patentee's response, wherein the Patentee requested that the Opposition be revoked as impermissible or, in the alternative, as unfounded and further requested that a hearing be scheduled. Exhibit D hereto is the Opponent's response to the Patentee's response to the Opponent's Arguments in support of the Opposition Request. In this document, the Opponent continues to present arguments for the admissibility of the grounds for opposition, and anticipation, lack of inventive activity and deficient disclosure of DE 4447287 C1. Exhibit E hereto is the Patentee's response to the Opponent's response as set forth in Exhibit D. Exhibits B to E are the English translation of the documents filed in German during the Opposition Proceeding.

During the prosecution of DE 4447287 C1, the Examiner had cited five PCT publications and European application EP 0 224 837 A2, each of which is listed on form PTO-1449, as references CB-CG, respectively. Because the disclosure of the EP 0224837 is in German, Applicant has also listed the corresponding U.S. disclosure, i.e., U.S. Patent No. 4,954,345 as reference AB on form PTO-1449.

COPENDING APPLICATIONS

The undersigned also respectfully directs the Examiner's attention to Applicant's copending patent applications as follows:

U.S. Patent Application Serial No. (U.S.S.N.) 09/621,574 filed June 21, 2000 as a continuation of U.S.S.N. 07/844,664 filed April 8, 1992 now issued as U.S. Patent No. 6,165,500 to Cevc, entitled "Preparations for the application of agents in mini-droplets";

U.S.S.N. 09/555,986 filed August 17, 2000 entitled "Method for developing, testing and using associates of macromolecules and complex aggregates for improved payload and controllable de-association rates" to Cevc et al.;

U.S.S.N. 09/887,493 filed June 22, 2001 entitled "Improved formulation for topical non-invasive application in vivo" to Cevc.

The EP equivalent filing (EP 0475160 B1) of U.S. Patent No. 6,165,500, mentioned above, has been the subject of an EP Opposition Proceeding. A decision has been rendered by the EPO Opposition Division upholding EP 0475160 B1 in its entirety, and an Appeal from the foregoing decision is still pending.

All references cited in the Opposition to DE 4447287 C1 were also cited in the Opposition to EP 0475160 B1. References cited in the Opposition and Appeal Proceedings to EP 0475160 B1 that were not cited in the Opposition to DE 4447287 C1 have also been made of record. Additionally, references cited in the above referenced copending applications and related applications pending in other foreign patent offices have also been made of record on attached form PTO-1449.

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Applicant respectfully requests that the Examiner consider and make of record the documents cited herein. Applicant further requests that a copy of the form PTO-1449, appropriately initialed by the Examiner, be returned to the Applicant in turn.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's attorney at the telephone number set forth below.

Respectfully Submitted,

DAVIDSON, DAVIDSON & KAPPEL, LLC

By: 

Clifford M. Davidson

Reg. No. 32,728

Livia S. Boyadjian

Reg. No. 34,781

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INFORMATION DISCLOSURE STATEMENT (3 of 4)

Sir:

In order to facilitate the mailing of all references listed on the enclosed form PTO-1449, this Information Disclosure Statement is the **third** of four identical Information Disclosure Statements and forms PTO-1449 submitted in the above-referenced application. Specifically, this Information Disclosure Statement is filed with references **CB-CU** of form PTO-1449.

Pursuant to the provisions of 37 C.F.R. §§ 1.97-1.99, Applicant submits herewith the following Information Disclosure Statement. Applicant respectfully requests consideration of the references listed on the attached form PTO-1449.

U.S. Patent No. 5,741,515 (reference AD) corresponds to EP 0 707 847 (Bayer); U.S. Patent No. 5,958,379 (reference AA) corresponds to EP 0 704 206 (Regenold); and U.S. Patent No. 6,165,500 (reference BA) corresponds to EP 0 475 160 (Cevc). Canadian Patent CA 1 143 656 (reference AK) corresponds to German patent DE 30 16 976 (reference AT).

The undersigned attorney has recently learned that there had been an Opposition to German Patent, DE 4447287 C1 which has a specification corresponding to the above referenced U.S. application. The above referenced application is a filing under 35 U.S.C. 371 of International application PCT/EP96/04526 filed on October 17, 1996. Specifically, in the German Patent Office DE 4447287 C1 has been subject to an Opposition Proceeding brought on or about February 6, 1997 by ROVI GmbH (the "Opponent"), which proceeding is still in progress.

The claims granted in the DE 4447287 C1 correspond to the claims set forth in PCT/EP96/04526 and the claims originally filed in the above referenced application. However, the claims granted in DE 4447287 C1 are different in scope from the claims pending in this

application. Nevertheless, the following information is provided so that the Examiner is able to review the references cited and the arguments made by the Opponent in the Opposition Proceeding. For the Examiner's convenience a copy of the German Patent is attached hereto as Exhibit A, although a copy of the German patent has been previously filed with an Information Disclosure Statement on November 30, 1999 in the above-referenced application.

OPPOSITION OF DE 4447287 C1

The Opponent sought revocation of the DE 4447287 C1 in accordance with §21, Section 1, Nos. 1, and 2 and §1, Sec. 1, No. 2 of the German Patent Law, alleging anticipation, lack of inventive activity, and deficient disclosure.

Five references, publications D1-D5, were cited by the Opponent. Publication D1 is EP 0 475 160 filed as reference AM in an Information Disclosure Statement filed on November 30, 2000 in the above-referenced application. Publications D2-D5 are listed on the attached form PTO-1449 as references CP, BP, CO and DL, respectively. Attached hereto as Exhibit B are the Opponent's arguments filed in support of the Opposition Request. Also attached is Exhibit C, the Patentee's response, wherein the Patentee requested that the Opposition be revoked as impermissible or, in the alternative, as unfounded and further requested that a hearing be scheduled. Exhibit D hereto is the Opponent's response to the Patentee's response to the Opponent's Arguments in support of the Opposition Request. In this document, the Opponent continues to present arguments for the admissibility of the grounds for opposition, and anticipation, lack of inventive activity and deficient disclosure of DE 4447287 C1. Exhibit E hereto is the Patentee's response to the Opponent's response as set forth in Exhibit D. Exhibits B to E are the English translation of the documents filed in German during the Opposition Proceeding.

During the prosecution of DE 4447287 C1, the Examiner had cited five PCT publications and European application EP 0 224 837 A2, each of which is listed on form PTO-1449, as references CB-CG, respectively. Because the disclosure of the EP 0224837 is in German, Applicant has also listed the corresponding U.S. disclosure, i.e., U.S. Patent No. 4,954,345 as reference AB on form PTO-1449.

COPENDING APPLICATIONS

The undersigned also respectfully directs the Examiner's attention to Applicant's copending patent applications as follows:

U.S. Patent Application Serial No. (U.S.S.N.) 09/621,574 filed June 21, 2000 as a continuation of U.S.S.N. 07/844,664 filed April 8, 1992 now issued as U.S. Patent No. 6,165,500 to Cevc, entitled "Preparations for the application of agents in mini-droplets";

U.S.S.N. 09/555,986 filed August 17, 2000 entitled "Method for developing, testing and using associates of macromolecules and complex aggregates for improved payload and controllable de-association rates" to Cevc et al.;

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The EP equivalent filing (EP 0475160 B1) of U.S. Patent No. 6,165,500, mentioned above, has been the subject of an EP Opposition Proceeding. A decision has been rendered by the EPO Opposition Division upholding EP 0475160 B1 in its entirety, and an Appeal from the foregoing decision is still pending.

All references cited in the Opposition to DE 4447287 C1 were also cited in the Opposition to EP 0475160 B1. References cited in the Opposition and Appeal Proceedings to EP 0475160 B1 that were not cited in the Opposition to DE 4447287 C1 have also been made of record. Additionally, references cited in the above referenced copending applications and related applications pending in other foreign patent offices have also been made of record on attached form PTO-1449.

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Respectfully Submitted,

DAVIDSON, DAVIDSON & KAPPEL, LLC

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INFORMATION DISCLOSURE STATEMENT (4 of 4)

Sir:

In order to facilitate the mailing of all references listed on the enclosed form PTO-1449, this Information Disclosure Statement is the **fourth** of four identical Information Disclosure Statements and forms PTO-1449 submitted in the above-referenced application. Specifically, this Information Disclosure Statement is filed with references **DB-DL** of form PTO-1449.

Pursuant to the provisions of 37 C.F.R. §§ 1.97-1.99, Applicant submits herewith the following Information Disclosure Statement. Applicant respectfully requests consideration of the references listed on the attached form PTO-1449.

U.S. Patent No. 5,741,515 (reference AD) corresponds to EP 0 707 847 (Bayer); U.S. Patent No. 5,958,379 (reference AA) corresponds to EP 0 704 206 (Regenold); and U.S. Patent No. 6,165,500 (reference BA) corresponds to EP 0 475 160 (Cevc). Canadian Patent CA 1 143 656 (reference AK) corresponds to German patent DE 30 16 976 (reference AT).

The undersigned attorney has recently learned that there had been an Opposition to German Patent, DE 4447287 C1 which has a specification corresponding to the above referenced U.S. application. The above referenced application is a filing under 35 U.S.C. 371 of International application PCT/EP96/04526 filed on October 17, 1996. Specifically, in the German Patent Office DE 4447287 C1 has been subject to an Opposition Proceeding brought on or about February 6, 1997 by ROVI GmbH (the "Opponent"), which proceeding is still in progress.

The claims granted in the DE 4447287 C1 correspond to the claims set forth in PCT/EP96/04526 and the claims originally filed in the above referenced application. However, the claims granted in DE 4447287 C1 are different in scope from the claims pending in this

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OPPOSITION OF DE 4447287 C1

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COPENDING APPLICATIONS

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Respectfully Submitted,

DAVIDSON, DAVIDSON & KAPPEL, LLC

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